IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6928 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BUDHIABHAI SOMABHAI KHALASI - Petitioner(s)
Versus
SURAT DISTRICT CO-OP. MILK PRODUCERS' UNION LTD. - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR KH BAXI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/06/2007

ORAL JUDGMENT

1. Shri A.K. Clerk, learned counsel for the petitioner; Shri K.H. Baxi, learned counsel for the respondent.

2. The petitioner-workman, being aggrieved by the award dated 19.5.2001 passed by the Presiding Officer, Labour Court in Reference [L.C.S.] No. 295 of 1993, rejecting his claim, is before this Court.

3. The short facts necessary for disposal of the present writ application are that the petitioner was working as permanent workman with the respondent establishment. According to the petitioner, during Barbi Mosque demolition riots, he could not come from Dandi to Surat and thereafter as he fell sick, he sent a certificate to the management that because of his ill-health, he will not be able to report on duty. But however, the management submits that the petitioner was sent registered notice that he was required to join duties and in case of non-compliance, his name would be struck off from the muster roll and his services would be terminated. According to the management, despite receipt of the letter cum notice, the petitioner did not bother to reply nor reported on duty.

4. The petitioner's case is that without issuing

any notice to show cause and/or without serving any charge sheet, simply after serving the registered letter, his services were terminated.

5. Shri Clerk, learned counsel for the petitioner submits that in case of non-reporting on duty, the management can take that to be misconduct, but despite having prima facie opinion that the action on the part of the workman amounts to misconduct, a notice to show cause and charge sheet are still required to be issued. According to him, an inquiry is required to be made on charge of the guilt and, on finding of misconduct, action of termination could be taken. According to him procedure required under the law has not been followed, therefore, the petitioner's termination was patently illegal. He also submits that if present is taken to be a case of retrenchment, then, the establishment is required to prove that along with the reasons for retrenchment, one month's notice was served to the workman or in lieu of notice, one month's salary was paid to the workman. According to him, this was also not observed,

therefore, order terminating the services of the petitioner on either of the count was bad. He submits that the learned Labour Court erred in not appreciating the legal position and was unnecessarily influenced by the alleged misconduct of the petitioner.

6. Shri K.H. Baxi, learned counsel for the respondent, after taking me through the award submits that looking to the conduct of the workman in not replying to the letter and in not reporting on duty, the management was justified in holding that the petitioner had abandoned the services and was also justified in striking off the name of the workman from the muster roll. He, however, submits that in case like present, if the Labour Court has not exercised its jurisdiction in favour of the workman, then, the Court should not interfere.

7. On being asked that whether an inquiry was made and a finding into the guilt of the petitioner was ever recorded, Shri Baxi fairly submitted that no such procedure was followed. On being asked that whether present was a case of

retrenchment, Shri Baxi submitted that present was a case of abandonment of service, therefore, the provisions of Section 25F of the Industrial Disputes Act, 1947 would not apply.

8. It is not in dispute that for one reason or the other whether genuine or manufactured, the workman did not report on the duty. It is also not in dispute before me that despite receipt of the letter asking the petitioner to report on duty, the petitioner did not reply to the letter nor reported to duty. It is also not in dispute before me that finding of fact recorded by the learned Labour Court is that the petitioner did not send any medical certificate showing his incapacity in attending the work.

9. From the facts, it would appear that the petitioner, when he was served with notice did not report on duty for one reason or the other. In such case, the respondent-establishment could not presume abandonment of the service, but was required to issue a notice to show cause to the petitioner or was required to serve a charge sheet upon the petitioner to answer the

allegations of misconduct. After serving such notice upon the petitioner workman, the establishment was obliged to provide proper opportunity to file written statement and lead evidence into the allegation of misconduct. In the present case, unfortunately, the respondent in undue haste, without following the law, removed the name of the petitioner from the muster roll taking the same to be the case of abandonment of service.

10. If the law requires a thing to be done in a particular manner, then, such thing is required to be done in particular manner after following the particular procedure. In absence of an inquiry and finding into the guilt of the petitioner, the respondent establishment could not terminate the services of the petitioner.

11. Learned Labour Court also erred in not appreciating that present was a case of non-observance of law and therefore, the conduct of the petitioner could not be taken into consideration. Even if I assume that the conduct of the petitioner was bad, rather

absurd, then too, the relief to which the petitioner is entitled under the law could not be denied to him. If an inquiry was made and finding of guilt against the interest of the petitioner was recorded by the establishment, then, they could certainly be allowed to say that the inquiry was in accordance with law and termination was not in the teeth of law. The learned Labour Court erred in not appreciating and considering the legal position and erred in rejecting the Reference.

12. The petitioner, in the considered opinion of this Court is entitled to the order of his reinstatement.

13. The question of back wages however, still remains.

14. At this stage, this Court would certainly be entitled to look into the conduct of the petitioner which led to his termination. For the reasons stated aforesaid and the findings recorded by the learned Labour Court, I must hold that the petitioner did not exhibit proper conduct in not replying to the notice or not

joining the duties despite directions from the management. Such conduct would disentitle him from back wages. I therefore refuse to grant back wages to the petitioner.

15. The award dated 19.5.2001 is hereby modified to the extent that instead of fresh appointment in favour of the petitioner, the petitioner would be deemed to be continued in service with all benefits attached to the service which may include his promotion and increment, but however, he would not be entitled to monetary benefits for the period during his termination and date of this order.

16. It goes without saying that if the establishment wants to conduct an inquiry into the alleged misconduct of the petitioner, then, they would certainly be entitled to initiate the inquiry and bring the same to its logical end, but however, they would be obliged to conduct an inquiry in accordance with law. Rule is made absolute to the above extent. No costs.

[R.S. GARG, J.]

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